

Matthew T. Theriault (SBN 244037)
Matthew.Theriault@CapstoneLawyers.com
Robert J. Drexler, Jr. (SBN 119119)
Robert.Drexler@CapstoneLawyers.com
Bevin Allen Pike (SBN 221936)
Bevin.Pike@CapstoneLawyers.com
Jonathan Lee (SBN 267146)
Jonathan.Lee@CapstoneLawyers.com
Capstone Law APC
1875 Century Park East, Suite 1000
Los Angeles, California 90067
Telephone: (310) 556-4811
Facsimile: (310) 943-0396

Attorneys for Plaintiff Kia Davidson

**UNITED STATES DISTRICT COURT
FOR THE CENTRAL DISTRICT OF CALIFORNIA**

KIA DAVIDSON, individually, and
on behalf of other members of the
general public similarly situated,

Plaintiff,

vs.

O'REILLY AUTO ENTERPRISES,
LLC, a Delaware corporation;
O'REILLY AUTO PARTS, a
business entity of unknown form;
CSK AUTO, INC., an Arizona
corporation; CSK AUTO PARTS, a
business entity of unknown form,

Defendants.

Case No.: 5:17-cv-603

CLASS ACTION COMPLAINT

- (1) Violation of California Labor Code §§ 226.7 and 1198 (Failure to Provide Rest Periods);
- (2) Violation of California Labor Code §§ 226(a), 1174(d), and 1198 (Non-Compliant Wage Statements and Failure to Maintain Payroll Records);
- (3) Violation of California Business & Professions Code §§ 17200, *et seq.* (Unlawful Business Practices); and
- (4) Violation of California Business & Professions Code §§ 17200, *et seq.* (Unfair Business Practices).

Jury Trial Demanded

1 Plaintiff Kia Davidson (“Plaintiff”), as individual, and on behalf of all
2 other members of the public similarly situated, alleges as follows against
3 O’REILLY AUTO ENTERPRISES, LLC, O’REILLY AUTO PARTS, CSK
4 AUTO, INC., and CSK AUTO PARTS:

5 INTRODUCTION

6 1. This is a class action pursuant to Rule 23 of the Federal Rules of
7 Civil Procedure to recover wages and all other available relief on behalf of
8 Plaintiff and all similarly situated current and former non-exempt, hourly paid
9 employees of Defendants whom received at least one wage statement from
10 Defendants.

11 2. Defendants operate a national chain of retail stores in California
12 selling automotive parts.

13 3. As set forth more fully below, Defendants have violated various
14 sections of the California Labor Code and applicable Industrial Welfare
15 Commission Wage Order including, but not limited to, sections mandating the
16 provision of rest breaks and accurate wage statements to employees.

17 JURISDICTION AND VENUE

18 4. This class action is brought pursuant to Rule 23 of the Federal Rules
19 of Civil Procedure. This Court has original jurisdiction over the subject matter
20 of this action pursuant to 28 U.S.C. §§ 1331-1332. Plaintiff alleges, on
21 information and belief, that the aggregate amount in controversy for this class
22 action exceeds five million dollars (\$5,000,000.00) exclusive of interest and
23 costs, that the proposed class is greater than one-thousand (1000) members, and
24 that any one plaintiff is a citizen of a state different from that of any defendant.
25 See Class Action Fairness Act (“CAFA”), Pub. L. 109-2, 119 Stat. 4 (2005).
26 The Court maintains supplemental jurisdiction over the state law claims pursuant
27 to 28 U.S.C. § 1367.

28 5. Venue is proper in this Court pursuant to 28 U.S.C. § 1391(a) and

(b) because Defendants maintain offices, have agents and are licensed to and do transact business in this district.

THE PARTIES

6. Plaintiff Kia Davidson is a resident of Apple Valley, California in the County of San Bernardino. Defendants have jointly employed Plaintiff as an hourly-paid, non-exempt Delivery Driver since June 2016. Plaintiff works full-time for Defendants at their O'REILLY store location in San Bernardino, California. Plaintiff typically works six (6) to eight (8) hours per day, five (5) days per week, and approximately 30-40 hours per week. Plaintiff earns \$10.92 per hour. Plaintiff's job duties include, without limitation, operating the cash register, stocking the store, locating parts for customers, merchandising, delivering parts and pulling parts. The majority of Plaintiff's job duties are performed in-store; she spends about 10% of her average workweek driving to deliver parts.

7. Defendant O'REILLY AUTO ENTERPRISES, LLC is, on information and belief, a Delaware corporation doing business in California, with its principal place of business in Springfield, Missouri, and at all times hereinafter mentioned, an employer whose employees are engaged throughout this county, the State of California, and/or the various states of the United States of America.

8. Defendant O'REILLY AUTO PARTS is, on information and belief, a business entity of unknown form, believed to be doing business in California, with its principal place of business in in Springfield, Missouri, and at all times hereinafter mentioned, an employer whose employees are engaged throughout this county, the State of California, and/or the various states of the United States of America.

9. Defendant CSK AUTO PARTS is, on information and belief, a business entity of unknown form, believed to be doing business in California,

1 with its principal place of business in in Springfield, Missouri, and at all times
2 hereinafter mentioned, an employer whose employees are engaged throughout
3 this county, the State of California, and/or the various states of the United States
4 of America.

5 10. Defendant CSK AUTO, INC. is, on information and belief, an
6 Arizona corporation doing business in California, with its principal place of
7 business in Springfield, Missouri, and at all times hereinafter mentioned, an
8 employer whose employees are engaged throughout this county, the State of
9 California, and/or the various states of the United States of America.

10 11. Plaintiff is informed and believes, and thereon alleges, that each and
11 all of the acts and omissions alleged herein was performed by, or is attributable
12 to, O'REILLY AUTO ENTERPRISES, LLC, O'REILLY AUTO PARTS, CSK
13 AUTO PARTS, and/or CSK AUTO, INC., (collectively "Defendants" or
14 "O'REILLY"), each acting as the agent for the other, with legal authority to act
15 on the other's behalf. The acts of any and all Defendants represent and were in
16 accordance with Defendants' official policy.

17 12. At all relevant times, Defendants, and each of them, ratified each
18 and every act or omission complained of herein. At all relevant times,
19 Defendants, and each of them, aided and abetted the acts and omissions of each
20 and all the other Defendants in proximately causing the damages herein alleged.

21 13. Plaintiff is informed and believes, and thereon alleges, that each of
22 said Defendants is in some manner intentionally, negligently, or otherwise
23 responsible for the acts, omissions, occurrences, and transactions alleged herein.

24 14. Under California law, Defendants are jointly and severally liable as
25 employers for the violations alleged herein because they have each exercised
26 sufficient control over the wages, hours, working conditions, and employment
27 status of Plaintiff and class members. Each Defendant had the power to hire and
28 fire Plaintiff and class members, supervised and controlled their work schedule

1 and/or conditions of employment, determined their rate of pay, and maintained
2 their employment records. Defendants suffered or permitted Plaintiff and class
3 members to work and/or “engaged” Plaintiff and class members so as to create a
4 common law employment relationship. As joint employers of Plaintiff and class
5 members, Defendants are jointly and severally liable for the civil penalties and
6 all other relief available to Plaintiff and class members under the law.

7 15. Plaintiff is informed and believes, and thereon alleges, that at all
8 relevant times, Defendants, and each of them, have acted as joint employers with
9 respect to Plaintiff and class members because Defendants have:

- 10 (a) jointly exercised meaningful control over the work performed
11 by Plaintiff and class members;
- 12 (b) jointly exercised meaningful control over Plaintiff and class
13 members’ wages, hours, and working conditions, including
14 the quantity, quality standards, speed, scheduling, and
15 operative details of the tasks performed by Plaintiff and class
16 members;
- 17 (c) jointly required that Plaintiff and class members perform
18 work which is an integral part of Defendants’ businesses; and
- 19 (d) jointly exercised control over Plaintiff and class members as a
20 matter of economic reality in that Plaintiff and class members
21 were dependent on Defendants, who shared the power to set
22 the wages of Plaintiff and class members and determine their
23 working conditions, and who jointly reaped the benefits from
24 the underpayment of their wages and noncompliance with
25 other statutory provisions governing their employment.

26 **CLASS ACTION ALLEGATIONS**

27 16. Plaintiff brings this action on her own behalf, as well as on behalf of
28 each and all other persons similarly situated, and thus seeks class certification

1 under Rule 23 of the Federal Rules of Civil Procedure.

2 17. All claims alleged herein arise under California law for which
3 Plaintiff seeks relief authorized by California law.

4 18. Plaintiff's proposed class consists of and is defined as follows:

5 All persons who worked for Defendants as a non-
6 exempt, hourly-paid employee in California within four
7 years prior to the filing of this complaint until the date
8 of trial ("Class").

9 19. Plaintiff's proposed subclass consists of and is defined as follows:

10 All persons who worked for Defendants as a non-
11 exempt, hourly-paid employee in California and
12 received at least one wage statement within one year
13 prior to the filing of this complaint until the date of trial
14 ("Subclass").

15 20. Members of the Class and Subclass are referred to herein as "class
16 members."

17 21. Plaintiff reserves the right to redefine the Class and to add
18 subclasses as appropriate based on further investigation, discovery, and specific
19 theories of liability.

20 22. This action is brought and properly may be maintained as a class
21 action pursuant to the provisions of Federal Rules of Civil Procedure 23(a)(1)-(4)
22 and 23(b)(1), (b)(2) or (b)(3) and satisfies the requirements thereof.

23 23. The exact number of class members is presently unknown, but on
24 information and belief there are thousands of class members working for
25 Defendants across California, thus it is reasonable to presume that the members
26 of the class are so numerous that joinder of all members is impracticable. The
27 disposition of their claims in a class action will provide substantial benefits to
28 the parties and the Court.

24. Plaintiff's claims are typical of those of the class members because
Plaintiff suffered the violations set forth in this complaint.

1 25. Plaintiff will adequately protect the interests of class members.
2 Plaintiff has no interests that are adverse to or conflict with class members and
3 are committed to the vigorous prosecution of this action. To that end, Plaintiff
4 has retained counsel who are competent and experienced in handling class
5 actions on behalf of employees.

6 26. A class action is superior to all other available methods for the fair
7 and efficient adjudication of this controversy since joinder of all members is
8 impracticable. Furthermore, as the amount suffered by individual class members
9 may be relatively small, the expense and burden of individual litigation make it
10 impossible for members of the California Class to individually redress the wrongs
11 done to them. There will be no difficulty in the management of this case as a class
12 action

13 27. There are common questions of law and fact as to class members
14 that predominate over questions affecting only individual members, including,
15 but not limited to:

- 16 (a) Whether Defendants failed to provide Plaintiff and class
17 members with rest periods;
- 18 (b) Whether Defendants provided Plaintiff and class members
19 with complete and accurate wage statements as required by
20 California Labor Code section 226(a);
- 21 (c) Whether Defendants failed to timely pay rest period
22 premiums to Plaintiff and class members during their
23 employment;
- 24 (d) Whether Defendants engaged in unlawful and unfair business
25 practices in violation of California Business & Professions
26 Code sections 17200, *et seq.*; and
- 27 (e) The appropriate amount of damages, restitution, or monetary
28 penalties resulting from Defendants' violations of California

1 law.

2 28. Plaintiff is not aware of any difficulty which will be encountered in
3 the management of this litigation which should preclude its maintenance as a
4 class action.

5 **GENERAL ALLEGATIONS**

6 29. Defendants own and operate a national chain of retail stores
7 specializing in the sale of automotive parts. Defendants operate approximately
8 4,800 retail stores throughout the United States with around 71,000 employees
9 nationwide. Within California, Defendants are estimated to own or run 523
10 locations and employ over 6000 persons.

11 30. According to Defendants' website, Defendants maintain their
12 company headquarters in Springfield, Missouri. Upon information and belief,
13 Defendants maintain a single, centralized Human Resources ("HR") department
14 at their company headquarters, which is responsible for conducting Defendants'
15 recruiting and hiring of new employees, collecting and processing all new hire
16 paperwork, and communicating and implementing Defendants' company-wide
17 policies, including timekeeping policies and rest break policies, to employees
18 throughout California.

19 31. Upon information and belief, Plaintiff and class members suffered
20 the same rest break violations arising out of Defendants' maintenance and
21 implementation of facially non-compliant rest break policy.

22 32. Upon information and belief, Defendants maintain a centralized
23 Payroll department at their company headquarters in Springfield, Missouri which
24 processes payroll for all non-exempt, hourly paid employees working for
25 Defendants at their various locations in California, including Plaintiff and class
26 members. Based upon information and belief, Defendants issue the same
27 formatted wage statements to all non-exempt, hourly paid employees in
28 California, irrespective of their work location. Accordingly, Plaintiff believes

1 that all class members throughout California were affected by Defendants'
2 noncompliance with wage statement reporting requirements.

3 33. Defendants continue to employ non-exempt, hourly-paid employees
4 throughout California.

5 34. Plaintiff is informed and believes, and thereon alleges, that at all
6 times herein mentioned, Defendants were advised by skilled lawyers and other
7 professionals, employees and advisors knowledgeable about California labor and
8 wage law, employment and personnel practices, and about the requirements of
9 California law.

10 35. Plaintiff is informed and believes, and thereon alleges, that
11 Defendants knew or should have known that Plaintiff and class members were
12 entitled to rest periods in accordance with the Labor Code and applicable IWC
13 Wage Order or payment of one (1) additional hour of pay at their regular rates
14 when they were not provided with a compliant rest period and that Plaintiff and
15 class members were not provided compliant rest periods or payment of one (1)
16 additional hour of pay at their regular rates when they were not provided a
17 compliant rest period.

18 36. Plaintiff is informed and believes, and thereon alleges, that
19 Defendants knew or should have known that Plaintiff and class members were
20 entitled to receive complete and accurate wage statements in accordance with
21 California law. In violation of the California Labor Code, Defendants did not
22 provide Plaintiff and class members with complete and accurate wage
23 statements.

24 37. Plaintiff is informed and believes, and thereon alleges, that
25 Defendants knew or should have known that they had a duty to maintain accurate
26 and complete payroll records in accordance with the Labor Code and applicable
27 IWC Wage Order, but willfully, knowingly, and intentionally failed to do so.

28 38. Plaintiff is informed and believes, and thereon alleges, that

1 Defendants knew or should have known that Plaintiff and class members were
2 entitled to timely payment of wages during their employment. In violation of the
3 California Labor Code, Defendants did not pay Plaintiff and class members all
4 wages, including, but not limited to, rest period premium wages within
5 permissible time periods.

6 39. Plaintiff are informed and believes, and thereon alleges, that at all
7 times herein mentioned, Defendants knew or should have known that they had a
8 duty to compensate Plaintiff and class members for all hours worked, and that
9 Defendants had the financial ability to pay such compensation but willfully,
10 knowingly, and intentionally failed to do so, and falsely represented to Plaintiff
11 and class members that they were properly denied wages, all in order to increase
12 Defendants' profits.

13 **FIRST CAUSE OF ACTION**

14 **Violation of California Labor Code §§ 226.7 and 1198—Rest Break** 15 **Violations** 16 **(Against all Defendants)**

17 40. Plaintiff incorporates by reference and re-alleges as if fully stated
18 herein each and every allegation set forth above.

19 41. At all relevant times, the applicable IWC Wage Order and
20 California Labor Code sections 226.7 and 1198 were applicable to Plaintiff and
21 class members employed by Defendants.

22 42. At all relevant times, the applicable IWC Wage Order provides that
23 “[e]very employer shall authorize and permit all employees to take rest periods,
24 which insofar as practicable shall be in the middle of each work period” and that
25 the “rest period time shall be based on the total hours worked daily at the rate of
26 ten (10) minutes net rest time per four (4) hours or major fraction thereof” unless
27 the total daily work time is less than three and one-half (3½) hours.

28 43. At all relevant times, California Labor Code section 226.7 provides

1 that no employer shall require an employee to work during any rest period
2 mandated by an applicable order of the California IWC.

3 44. To comply with its obligation to provide rest periods under
4 California Labor Code section 226.7 and the applicable IWC Wage Order, an
5 employer must “relinquish any control over how employees spend their break
6 time, and relieve their employees of all duties — including the obligation that an
7 employee remain on call. A rest period, in short, must be a period of rest.”
8 *Augustus, et al. v. ABM Security Services, Inc.*, 2 Cal. 5th 257, 269-270 (2016).

9 45. During the relevant time period, Defendants failed to authorize and
10 permit Plaintiff and class members to take ten (10) minute rest periods per each
11 four (4) hour period worked or major fraction thereof in violation of Labor Code
12 section 226.7 and the applicable IWC Wage Order.

13 46. During the relevant time period, Defendants maintained and
14 implemented, on a company-wide basis, labor budget policies that resulted in
15 understaffing of stores. On information and belief, Defendants allocated labor to
16 stores based on each store’s sales generation figures, without taking into
17 consideration the provision of adequate rest break coverage for employees. As a
18 result of Defendants’ utilization of labor budgets and resultant company-wide
19 understaffing, Plaintiff and class members were prevented from being relieved of
20 all duties to take compliant rest periods.

21 47. Compounding Defendants systematic understaffing of stores,
22 Defendants also had no policy and/or practice of scheduling rest periods for
23 employees, which further impeded and prevented Plaintiff and class members
24 from taking rest periods. As a result of Defendants’ understaffing and failure to
25 schedule rest periods, Plaintiff and class members worked shifts in excess of 3.5
26 hours, in excess of 6 hours, and in excess of 10 hours without receiving all
27 uninterrupted ten (10) minute rest periods to which they were entitled. For
28 example, throughout her employment, Plaintiff regularly has not received any

1 rest periods during her shifts.

2 48. Upon information and belief, Defendants failed to schedule rest
3 breaks in accordance with California law, specifically, by failing to schedule
4 second and third rest periods for shifts 6 to 10 hours in length or shifts 10 to 14
5 hours in length, respectively. Plaintiff regularly works shifts in excess of six (6)
6 hours and does not receive the two (2) rest periods she was entitled to during her
7 shift.

8 49. At all relevant times, Defendants' limited allocation of labor hours,
9 failure to schedule rest breaks, and maintenance of a facially non-compliant rest
10 break policy, prevented Plaintiff and class members from being relieved of all
11 duty in order to take compliant rest periods. Defendants' management did not
12 inform Plaintiff and class members about the rest breaks to which they were
13 entitled during their workdays. The only time Plaintiff was made aware of her
14 right to a rest break was at her interview with Defendants before she started
15 working for Defendants. In practice, however, rest breaks were non-existent.

16 50. At the same time, Defendants have implemented a company-wide
17 policy to not pay rest period premiums and Plaintiff has not been paid any rest
18 break premiums for missed rest breaks. Alternatively, to the extent that
19 Defendants did pay Plaintiff and class members one (1) additional hour of
20 premium pay for missed rest periods, Defendants did not pay Plaintiff and class
21 members at the correct rate of pay for premium wages because Defendants failed
22 to include all forms of compensation, such as commissions, incentive pay and/or
23 nondiscretionary bonuses, in the regular rate of pay. Specifically, Defendants
24 pay Plaintiff and class members non-discretionary bonus and/or incentive pay
25 each month calculated as a percentage of their respective store's sales
26 performance. Plaintiff typically receives around \$50.00 per month as a result of
27 Defendants' bonus/incentive plan, but upon information and belief, Defendants
28 do not include this bonus pay in Plaintiff's and other class members' regular rate

1 of pay. As a result, to the extent Defendants paid Plaintiff and class members
2 premium pay for missed rest periods, it did so at a lower rate than required by
3 law.

4 51. Accordingly, Defendants failed to provide Plaintiff and class
5 members rest periods and failed to pay rest period premiums due, in violation of
6 Labor Code sections 226.7 and 1198 and the applicable IWC Wage Order.
7 Plaintiff and class members are therefore entitled to recover from Defendants
8 one (1) additional hour of pay at the employee's regular rate of compensation for
9 each work day that the rest period was not provided.

10 **SECOND CAUSE OF ACTION**

11 **Violation of California Labor Code §§ 226(a), 1174(d), and 1198 –**
12 **Non-Compliant Wage Statements and Failure to Maintain Accurate Payroll**
13 **Records**
14 **(Against all Defendants)**

15 52. Plaintiff incorporates by reference and re-alleges as if fully stated
16 herein each and every allegation set forth above.

17 53. At all relevant times herein set forth, California Labor Code section
18 226(a) provides that every employer shall furnish each of his or her employees
19 an accurate and complete itemized wage statement in writing, including, but not
20 limited to, the name and address of the legal entity that is the employer, the
21 inclusive dates of the pay period, total hours worked, and all applicable rates of
22 pay.

23 54. Labor Code section 226(e) provides that if an employer fails to
24 comply with providing an employee with properly itemized wages statements as
25 set forth in 226(a), then the employee is entitled to recover the greater of all
26 actual damages or \$50.00 for the initial pay period in which a violation occurs
27 and \$100 per employee for each violation in a subsequent pay period, not to
28 exceed \$4,000. Further, Labor Code section 226.3 provides that any employer

1 who violates section 226(a) shall be subject to a civil penalty in the amount of
2 \$250 per employee per violation in an initial citation and \$1,000 per employee
3 for each violation in a subsequent citation, for which the employer fails to
4 provide the employee a wage statement or fails to keep the required records
5 pursuant to Section 226(a).

6 55. At all relevant times herein, Defendants knowingly and intentionally
7 provided Plaintiff and, for greater than three years, class members with uniform,
8 but incomplete and inaccurate wage statements that failed to comply Labor Code
9 sections 226(a)(1), 226(a)(2), 226(a)(5), 226(a)(8), and 226(a)(9). Because
10 Defendants failed to pay rest period premiums, and thereby failed to include rest
11 period premium wages in Plaintiff's and class members' regular rate of pay for
12 purposes of paying overtime, the gross wages and net wages listed on Plaintiff
13 and class members' wage statements were incorrect in violation of Labor Code
14 sections 226(a)(1) and 226(a)(5). And, because Defendants did not include rest
15 period premiums in Plaintiff's and class members' regular rate of pay for
16 purposes of paying overtime, Defendants failed to furnish wage statements to
17 Plaintiff and class members containing all correct applicable hourly rates of pay,
18 namely the overtime rates of pay, in violation of section 226(a)(9).

19 56. Defendants' failure to pay rest period premiums also resulted in an
20 inaccurate calculation of the employees' regular rate of pay when overtime was
21 either earned or paid because such amounts were not included. Thus, the wage
22 statements were furnished with inaccurate hourly rates, and especially the
23 overtime rate when overtime wages were due, in violation of section 226(a)(9).

24 57. Separate from these violations, Defendants issued uniform wage
25 statements to Plaintiff and class members that fail to list the correct name and
26 address of the legal entity of the actual employer in violation of Labor Code
27 section 226(a)(8).

28 58. Additionally, Plaintiff's and class members' wage statements

1 identify an address of “PO BOX 1156, SPRINGFIELD, MO 65801,” which is
2 not the address of the legal entity that employs Plaintiff and other class members.
3 One or more of the entities listed above are incorporated in Delaware and
4 Arizona, and the headquarters for one or more of them appear to be “233 South
5 Patterson Avenue, Springfield, MO 65802-2298.”

6 59. California Labor Code section 1174(d) provides that “[e]very person
7 employing labor in this state shall ... [k]eep a record showing the names and
8 addresses of all employees employed and the ages of all minors” and “[keep, at a
9 central location in the state or at the plants or establishments at which employees
10 are employed, payroll records showing the hours worked daily by and the wages
11 paid to, and the number of piece-rate units earned by and any applicable piece
12 rate paid to, employees employed at the respective plants or establishments...”
13 During the relevant time period, and in violation of Labor Code section 1174(d),
14 Defendants willfully failed to maintain accurate payroll records for Plaintiff and
15 class members showing the daily hours they worked and the wages paid thereto
16 as a result of failing to record the off-the-clock hours that they worked.

17 60. Because Defendants failed to provide gross wages earned, net wages
18 earned and correct overtime rates of pay on wage statements (as a result of not
19 paying rest period premiums and including such in regular rates of pay), and
20 because Defendants failed to provide Plaintiff and class members with accurate
21 and clear information regarding the employer name and address, Plaintiff and
22 class members have been prevented from verifying, solely from information on
23 the wage statements themselves, that they were paid correctly and in full were
24 given incorrect and/or confusing information with which to contact their
25 employer. Instead, Plaintiff and class members have had to look to sources
26 outside of the wage statements themselves and reconstruct time records to
27 determine the extent of underpayment and have suffered confusion in trying to
28 determine the name and contact information for their true employer, thereby

1 causing them injury.

2 61. Plaintiff and class members are entitled to recover from Defendants
3 the greater of their actual damages caused by Defendants' failure to comply with
4 California Labor Code section 226(a), or an aggregate penalty not exceeding four
5 thousand dollars (\$4,000) per employee.

6 **THIRD CAUSE OF ACTION**

7 **Violation of California Business & Professions Code §§ 17200, *et seq.* –**
8 **Unlawful Business Practices**
9 **(Against all Defendants)**

10 62. Plaintiff incorporates by reference and re-alleges as if fully stated
11 herein each and every allegation set forth above.

12 63. Defendants are a "person" as defined by California Business &
13 Professions Code sections 17201, as they are corporations, firms, partnerships,
14 joint stock companies and/or associations.

15 64. Defendants' conduct, as alleged herein, has been, and continues to
16 be, unfair, unlawful and harmful to Plaintiff, class members, and to the general
17 public. Plaintiff has suffered injury in fact and has lost money as a result of
18 Defendants' unlawful business practices. Plaintiff seeks to enforce important
19 rights affecting the public interest within the meaning of Code of Civil Procedure
20 section 1021.5.

21 65. Defendants' activities, as alleged herein, are violations of California
22 law, and constitute unlawful business acts and practices in violation of California
23 Business & Professions Code sections 17200, *et seq.*

24 66. A violation of California Business & Professions Code sections
25 17200, *et seq.* may be predicated on the violation of any state or federal law. In
26 the instant case, Defendants' policies and practices have violated state law in at
27 least the following respects:

28 (a) Failing to provide uninterrupted rest periods to Plaintiff and

class members in violation of California Labor Code sections 226.7, 1198, and the applicable IWC Order, as alleged herein;

- (b) Failing to provide Plaintiff and class members with accurate wage statements in violation of California Labor Code sections 226(a), 1198, and the applicable IWC Order, as alleged herein; and
- (c) Failing timely to pay all earned wages to Plaintiff and class members in violation of California Labor Code section 204 and the applicable IWC Order, as set forth below.

67. At all relevant times herein set forth, California Labor Code section 204 requires that all wages earned by any person in any employment between the 1st and the 15th days, inclusive, of any calendar month, other than those wages due upon termination of an employee, are due and payable between the 16th and the 26th day of the month during which the labor was performed. Labor Code section 204 further provides that all wages earned by any person in any employment between the 16th and the last day, inclusive, of any calendar month, other than those wages due upon termination of an employee, are due and payable between the 1st and the 10th day of the following month.

68. At all relevant times herein, California Labor Code section 204 also requires that all wages earned for labor in excess of the normal work period shall be paid no later than the payday for the next regular payroll period.

Alternatively, at all relevant times herein, Labor Code section 204 provides that the requirements of this section are deemed satisfied by the payment of wages for weekly, biweekly, or semimonthly payroll if the wages are paid not more than seven (7) calendar days following the close of the payroll period.

69. During the relevant time period, Defendants willfully failed to pay Plaintiff and class members all wages due to them within any time period specified by California Labor Code section 204 including, but not limited to, rest

1 period premium wages.

2 70. As a result of the violations of California law herein described,
3 Defendants unlawfully gained an unfair advantage over other businesses.
4 Plaintiff and class members have suffered pecuniary loss by Defendants'
5 unlawful business acts and practices alleged herein.

6 71. Pursuant to California Business & Professions Code sections 17200
7 *et seq.*, Plaintiff and class members are entitled to restitution of the wages
8 withheld and retained by Defendants during a period that commences four years
9 prior to the filing of this complaint; a permanent injunction requiring Defendants
10 to pay all outstanding wages due to Plaintiff and class members; and an award of
11 attorneys' fees pursuant to California Code of Civil Procedure section 1021.5
12 and other applicable laws; and an award of costs.

13 **FOURTH CAUSE OF ACTION**

14 **Violation of California Business & Professions Code §§ 17200, *et seq.* –**
15 **Unfair Business Practices**
16 **(Against all Defendants)**

17 72. Plaintiff incorporates by reference and re-alleges as if fully stated
18 herein each and every allegation set forth above.

19 73. Defendants are a "person" as defined by California Business &
20 Professions Code sections 17201, as they are corporations, firms, partnerships,
21 joint stock companies, and/or associations.

22 74. Defendants' conduct, as alleged herein, has been, and continues to
23 be, unfair, and harmful to Plaintiff, class members, and to the general public.
24 Plaintiff has suffered injury in fact and has lost money as a result of Defendants'
25 unfair business practices. Plaintiff seeks to enforce important rights affecting the
26 public interest within the meaning of Code of Civil Procedure section 1021.5.

27 75. Defendants' activities, namely Defendants' company-wide practice
28 and/or policy of not paying Plaintiff and class members rest period premium

1 wages due to them under Labor Code section 226.7, deprived Plaintiff and class
2 members of the compensation guarantee and enhanced enforcement implemented
3 by section 226.7. The statutory remedy provided by section 226.7 is a “‘dual-
4 purpose’ remedy intended primarily to compensate employees, and secondarily
5 to shape employer conduct. *Safeway, Inc. v. Superior Court*, 238 Cal. App. 4th
6 1138, 1149 (2015). The statutory benefits of section 226.7 were guaranteed to
7 Plaintiff and class members as part of their employment with Defendants, and
8 thus Defendants’ practice and/or policy of denying these statutory benefits
9 constitutes an unfair business practice in violation of California Business &
10 Professions Code sections 17200, *et seq.* (*Id.*)

11 76. A violation of California Business & Professions Code sections
12 17200, *et seq.* may be predicated on any unfair business practice. In the instant
13 case, Defendants’ policies and practices have violated the spirit of California’s
14 rest break laws and constitute acts against the public policy behind these laws.

15 77. Pursuant to California Business & Professions Code sections 17200
16 *et seq.*, Plaintiff and class members are entitled to restitution for the class-wide
17 loss of the statutory benefits implemented by section 226.7 withheld and retained
18 by Defendants during a period that commences four years prior to the filing of
19 this complaint; a permanent injunction requiring Defendants to pay all statutory
20 benefits implemented by section 226.7 due to Plaintiff and class members; an
21 award of attorneys’ fees pursuant to California Code of Civil Procedure section
22 1021.5 and other applicable laws; and an award of costs.

23 REQUEST FOR JURY TRIAL

24 Plaintiff requests a trial by jury.

25 PRAYER FOR RELIEF

26 Plaintiff, on behalf of herself and all others similarly situated, prays for
27 relief and judgment against Defendants, jointly and severally, as follows:

- 28 1. For damages, unpaid wages, penalties, and attorneys’ fees in excess

1 of twenty-five thousand dollars (\$25,000), exclusive of interest and costs.
2 Plaintiff reserves the right to amend her prayer for relief to seek a different
3 amount.

4 **Class Certification**

- 5 2. That this case be certified as a class action;
6 3. That Plaintiff be appointed as representative of the Class and
7 subclass;
8 4. That counsel for Plaintiff be appointed as class counsel.

9 **As to the First Cause of Action**

10 5. That the Court declare, adjudge and decree that Defendants violated
11 California Labor Code sections 226.7 and 1198 and applicable IWC Wage
12 Orders by willfully failing to provide all rest periods to Plaintiff and class
13 members;

14 6. That the Court make an award to the Plaintiff and class members of
15 one (1) hour of pay at each employee's regular rate of pay for each workday that
16 a rest period was not provided;

17 7. For all actual, consequential, and incidental losses and damages,
18 according to proof;

19 8. For premiums pursuant to California Labor Code section 226.7(b);

20 9. For pre-judgment interest on any unpaid rest period premiums from
21 the date such amounts were due, or as otherwise provided by law; and

22 10. For such other and further relief as the Court may deem equitable
23 and appropriate.

24 **As to the Second Cause of Action**

25 11. That the Court declare, adjudge and decree that Defendants violated
26 the recordkeeping provisions of California Labor Code section 226(a) and
27 applicable IWC Wage Orders as to Plaintiff and class members, and willfully
28 failed to provide accurate itemized wage statements thereto;

1 12. For all actual, consequential and incidental losses and damages,
2 according to proof;

3 13. For statutory penalties pursuant to California Labor Code section
4 226(e); and

5 14. For such other and further relief as the Court may deem equitable
6 and appropriate.

7 **As to the Third Cause of Action**

8 15. That the Court declare, adjudge and decree that Defendants conduct
9 of failing to provide Plaintiff and class members rest periods, failing to provide
10 Plaintiff and class members accurate and complete wage statements, and failing
11 to timely pay all earned wages during employment, constitutes an unlawful
12 business practice in violation of California Business and Professions Code
13 sections 17200, *et seq*;

14 16. For restitution of unpaid wages to Plaintiff and all class members
15 and prejudgment interest from the day such amounts were due and payable;

16 17. For the appointment of a receiver to receive, manage and distribute
17 any and all funds disgorged from Defendants and determined to have been
18 wrongfully acquired by Defendants as a result of violations of California
19 Business & Professions Code sections 17200 *et seq.*;

20 18. For reasonable attorneys' fees and costs of suit incurred herein
21 pursuant to California Code of Civil Procedure section 1021.5; and

22 19. For such other and further relief as the Court may deem equitable
23 and appropriate.

24 **As to the Fourth Cause of Action**

25 20. That the Court declare, adjudge and decree that Defendants' conduct
26 of denying Plaintiff and class members the statutory benefits guaranteed under
27 section 226.7 constitutes an unfair business practice in violation of California
28 Business and Professions Code sections 17200, *et seq.*;

1 21. For restitution of the statutory benefits under section 226.7 unfairly
2 withheld from Plaintiff and class members and prejudgment interest from the day
3 such amounts were due and payable;

4 22. For the appointment of a receiver to receive, manage and distribute
5 any and all funds disgorged from Defendants and determined to have been
6 wrongfully acquired by Defendants as a result of violations of California
7 Business & Professions Code sections 17200 *et seq.*;

8 23. For reasonable attorneys' fees and costs of suit incurred herein
9 pursuant to California Code of Civil Procedure section 1021.5;

10 24. For pre-judgment and post-judgment interest as provided by law;
11 and

12 25. For such other and further relief as the Court may deem equitable
13 and appropriate.

14 Dated: March 29, 2017

Respectfully submitted,

Capstone Law APC

16
17 By:



18 Matthew T. Theriault
19 Robert J. Drexler
Bevin Allen Pike
Jonathan Lee

20 Attorneys for Plaintiff Kia Davidson
21
22
23
24
25
26
27
28